



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

April 4, 2006

The Honorable David P. Currier, Chair
Resources, Recreation and Development Committee
Room 305, Legislative Office Building
Concord, NH 03301

RE: SB 103-FN-A-L, establishing a committee to study alternatives for funding the operation and maintenance of state-owned dams and making an appropriation to the state dam maintenance fund

Dear Chairman Currier:

Thank you for the opportunity to testify in favor of SB 103-FN, which now establishes a committee to study alternatives for funding the operation and maintenance of state-owned dams and makes an appropriation to the State's Dam Maintenance Fund.

Under the bill amended by the Senate Environment and Wildlife Committee, one million dollars were to be appropriated to the Dam Maintenance Fund to cover the anticipated shortfall in the fund in FY2007 while the study committee was formed to identify alternative, long-term revenue sources. However, the bill has been amended by the Senate Finance Committee to reduce the appropriation to only \$1. The Department of Environmental Services (DES) strongly urges that the bill be amended to restore the one million dollar appropriation. Otherwise, at the end of this biennial budget, there will only be sufficient revenues in the Dam Maintenance Fund to repay the bonds issued to establish the Fund, and no money will be available for the operation, maintenance and repair of state-owned dams.

The study committee that is proposed as part of the bill would be the second formed in the past two years to study alternatives for funding the operation and maintenance of state-owned dams. The first was formed pursuant to Chapter 121:1, Laws of 2004. A copy of the final report of the Study Committee is attached.

As stated in the report, the State of New Hampshire owns a total of 269 dams. Many of these dams impound the most important recreational lakes in the state. Of these, 29 are High Hazard Dams, the failure of which would cause loss of life downstream, and 53 are Significant Hazard Dams, the failure of which would cause significant property damage downstream. Even the loss of any of the Low Hazard Dams that the state owns could cause significant economic losses to the state due to the loss of recreational opportunities and the devaluation of waterfront property associated with the dam.

Many of these dams were constructed in the mid 1800's to provide waterpower to fuel the industrialization of New Hampshire and Massachusetts, and most of the dams that the state owns are well over 100 years old. Because of their age, they require continued attention to maintain them in a safe condition. Given the number of dams the state owns and the normal design life of these structures, the state must perform major repairs or reconstruction on an average of five dams per year. The large number of dams the state owns also puts a large operations burden on the state. The outlets of each of these dams must be constantly managed so as not to cause flooding in the lakes and downstream, and to ensure that the recreation and other public benefits provided by the lakes are maintained. This work is performed by a crew of five dam operators, who, with help from an eight-person construction crew, worked night and day during the floods of October 2005 to operate the dams to reduce flooding and ensure the dams' integrity.

The costs for the operation, maintenance, repair and reconstruction of these dams are funded from the State Dam Maintenance Fund. The sole source of revenue to the fund is rent payments that DES receives from leasing twelve of the dams that it owns to private hydropower developers to generate electricity at the sites. Under the terms of the leases, the rent that is paid to DES is a percentage of the revenue from the sale of power at the facilities. Eleven of these lessees sell the power to Public Service Company of New Hampshire (PSNH).

Two years ago, the Dam Maintenance Fund was projected to be solvent through 2015 based on projected revenues from these hydropower leases and projected expenditures on bond obligations and dam reconstruction projects. However, in 2002 PSNH initiated actions to renegotiate their above-market power purchase agreements pursuant to RSA 374-F. This is the Electric Utility Restructuring legislation that directs utilities to take all reasonable measures to mitigate stranded costs, including the renegotiation of power purchase contracts. As part of that initiative, PSNH bought-out or bought-down the above-market power purchase agreements of seven of the lessees of the state-owned dams in return for lump sum payments made to these lessees. The result was a 40% drop in revenue to the State Dam Maintenance Fund. In addition to this drop in revenue, in 2003 the lease for the state-owned Pontook Dam was acquired by the Brascan Corporation, which sells the power it generates at the facility to its energy marketing subsidiary at below-market rates. In 2005 alone, the loss to the State Dam Maintenance Fund from this transaction was approximately \$300,000. These losses in revenue, combined with the continuing obligations of the fund, have caused the fund to be insolvent.

Given this sudden, unexpected reductions in the funding source of the Dam Maintenance Fund, the Legislature reacted quickly by enacting SB 488, Chapter 121:1, Laws of 2004 and forming a committee to study the effects of electric utility restructuring on the state's Dam Maintenance Fund and the alternatives for funding the operation and maintenance of state-owned dams. The Committee met through the summer and fall of 2004, and issued its final report on December 1, 2004.

In its final report, the Committee predicted the likely shortfall in the Dam Maintenance Fund will likely be approximately \$700,000 per year in the near term, when the bond payments

that must be made from the fund are the highest, but averaging approximately \$525,000 over the next nine years. However, depending on the market price for power and other factors affecting lease payments, the shortfall could be over a million dollars in the short term and average approximately \$900,000 over the next nine years. The Committee concluded that, since the dams could not be dismantled or turned over to others, another source of funds needed to be found to fill this gap so that required dam maintenance could continue. The Committee noted that the gap in the funding was created by the electric utility restructuring that resulted in reduced payments to the fund from leases on state-owned dams, but that also resulted in a reduction in payments by the electric ratepayers in the state, which the Committee estimated to be approximately \$6.2 million over time. According to the Committee, replacing those payments with money from another source is not an instance of growing government or, even if a new tax is involved, a violation of a taxpayer pledge, because the result is revenue neutral.

The Committee then identified potential alternative funding from those sources that benefit most directly from the impoundments created by state-owned dams, including shorefront property owners, boaters, anglers, and others that use the impoundment for recreation. Alternative funding sources examined, but determined by the Committee to be impractical, included leasing additional dams for hydropower generation and increasing fishing license fees, boat registration fees, boat mooring fees, and park fees. However, the Committee did recommend two practical funding solutions: the first one being allocation of a portion of the unrefunded road tolls to the Dam Maintenance Fund, and the second one being a shorefront maintenance fee, to be deposited in the Dam Maintenance Fund, of 10 cents for each foot of shore frontage on a lake or pond impounded by a state owned dam. Unfortunately, bills introduced last session to implement each alternative failed to pass. SB 25, the bill which would allocate a portion of the unrefunded road toll tax, was determined to be Inexpedient to Legislate. SB 103, as originally proposed, would have implemented the shorefront property fee. However, it was rereferred to the Senate Environment and Wildlife Committee where it was amended to eliminate the shorefront maintenance fee, and instead appropriate a million dollars to the Dam Maintenance Fund for FY2007 while another Study Committee is formed to identify alternative funding solutions.

The Department of Environmental Services supports SB 103-FN, and looks forward to working with the new Study Committee to again identify alternative sources of funding to ensure that the state's dams continue to be operated and maintained so that they do not pose a threat to life and property downstream and continue to provide economic and recreation benefits to the state. However, in the four years since revenues to State's Dam Maintenance Fund were reduced, all reserves have been nearly exhausted. Therefore, DES strongly urges that the bill be amended to restore the one million dollar appropriation proposed by the Senate Environment and Wildlife Committee. Otherwise, at the end of the current biennial budget, there will only be sufficient revenues in the Dam Maintenance Fund to repay the bonds issued to establish the Fund, and no money will be available for the operation, maintenance and repair of state-owned dams.

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Thank you for this opportunity to comment on this bill. Please call either me at 271-3503, or Jim Gallagher at 271-1961, if you have any questions or need additional information.

Very truly yours,


for Michael P. Nolin
Commissioner

Attachment

cc: Senator Carl R. Johnson
Representative Judith T. Spang
Representative MaryAnn N. Blanchard